

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

MARTIN A. MARTIN
(Petitioner-Appellant)

PRECEDENT
TAX DECISION
No. P-T-35
Case No. T-68-45

Employer Account No.

WILLIAM R. WARNER
(Respondent)

DEPARTMENT OF EMPLOYMENT
(Respondent)

The petitioner appealed from Referee's Decision No. LA-T-2018 which denied its petition for reassessment.

STATEMENT OF FACTS

The referee's decision was mailed to the petitioner on June 25, 1968. The petitioner's appeal letter bearing the date of July 26, 1968 was received by us on July 31, 1968. Upon the envelope in which the appeal letter was delivered to us, there appears a postal meter stamp in red print bearing the legend "HOLLYWOOD JUL 24 '68 CALIF.", and a regular postmark stamp in black print bearing the legend "LOS ANGELES JUL 28 AM 1968 CALIF."

From the meter stamp date of July 24, 1968, we administratively processed this appeal in the manner of a timely filed one. In regular course, we sent the petitioner our usual letter of acknowledgment on August 14, 1968. This letter briefly refers to our procedures, but carries no invitation to present any information in regard to delay in filing that might explain its cause. Had we processed the appeal in accordance with the postmark date of July 28, 1968, we would have sent the petitioner a special letter directed to the problem of

delay and inviting him to make a showing of cause in regard to it.

In response to our acknowledgment letter, the petitioner's counsel wrote to us under date of September 3, 1968 requesting an opportunity to present written and oral argument to us and also requesting a loan of the transcript and exhibits. We received his letter on September 5, 1968. The envelope in which it was delivered to us bore the stamp of the same postal meter with the legend "HOLLYWOOD SEP 30 '68 CALIF."

In reviewing these requests, the conflict between the postal meter date and the regular postmark date on the appeal envelope came to our attention. Accordingly, on September 17, 1968, we advised the petitioner of the timeliness problem presented by the postmark date and invited him to present an explanation of delay within ten days. The petitioner's counsel replied by letter dated September 20, 1968, in which he urged the timeliness of the appeal based upon the meter stamp date without presenting any explanation of delay.

On September 25, 1968 we advised the petitioner's counsel that the timeliness of the appeal would have to be determined from the official postmark date on the envelope in which the appeal letter was delivered to us unless it could be established that this postmark erroneously reflected the time of deposit of the appeal letter in the United States mail. Again we invited the petitioner to submit any explanation of delay in filing that might show good cause permitting an extension of the filing time. We have received no reply to this letter.

REASONS FOR DECISION

The method by which we determine the timeliness of an appeal is set forth in detail in our Precedent Decision No. P-T-23. Since these proceedings are administrative rather than civil, we do not consider that Code of Civil Procedure sections 10 and 12, upon which the petitioner bases his computation of time, are applicable to them. However, we do recognize the applicability of Government Code sections 6700 and 6800 which establish the same principles of time computation.

The problem here is merely that of establishing the date to which the computation of time is to apply. We cannot accept the date of the petitioner's counsel's postal meter as the filing date of the appeal in the absence of a more convincing explanation of its accuracy in view of the following:

1. The letter enclosed in the metered envelope bears on its face a date two days later than the meter date.
2. This same envelope bears an official postmark date four days later than the meter date.
3. The postal meter was under the control of the petitioner's counsel.
4. Its reliability is subject to further question from the fact that the subsequent letter from the petitioner's counsel, bearing on its face the date of September 3, 1968, was received by us on September 5, 1968 in an envelope bearing a meter date of September 30, 1968, imprinted by the same meter, an obviously incorrect date.

There is nothing in the record before us to indicate that the official postmark date of July 28, 1968 erroneously reflects the time of deposit of the appeal letter in the United States mail. Accordingly, we hold that the petition was filed on the official postmark date.

The computation of filing period commences with the day following the mailing of the referee's decision as the first day. This was Wednesday, June 26, 1968, and the thirtieth day of the period is by direct count Thursday, July 25, 1968. Since the referee's decision was mailed to the petitioner, this period was extended one further day to Friday, July 26, 1968, under the provisions of Unemployment Insurance Code section 1140, in the manner set forth in Code of Civil Procedure section 1013 (prior to its amendment effective November 13, 1968). No further extensions of filing time are indicated by the record before us.

Accordingly, we have no jurisdiction under the statute to review a petition filed after July 26, 1968

in the absence of an explanation which shows good cause for the delay in filing. No such explanation has been presented to us and none is apparent in the record. We find, therefore, that the petition was not timely filed and must be dismissed.

In reaching our decision, we have carefully considered the fact that there was an error in the administrative processing of the petitioner's appeal when it was received by us. Our concern has centered on the question as to whether because of such an error the petitioner might be entitled to relief in the nature of estoppel. It is our conclusion that no such relief is available to the petitioner for the following reasons:

The petitioner has suffered no injury from our conduct. His failure to file his appeal on or before July 26, 1968 was a completed fact before we acted. Our conduct could in no way change this fact. Had petitioner shown good cause for his delay in filing, we could have and would have accepted his appeal as timely. We afforded him adequate opportunity to do so, but no showing was made. Therefore, the petitioner has not established at least one of the essential elements of an estoppel, namely, that he relied upon our conduct to his injury.

We also wish to point out that as explained in our Precedent Decision P-T-23, the petitioner has not yet lost his basic right to an administrative review of the tax liability in question by our dismissal of his petition. All he has lost is the right to seek a review prior to payment of the department's tax demand. By timely pursuit of the refund procedures set forth in Unemployment Insurance Code sections 1177 through 1183 after payment, a full range of administrative and judicial review is still available to the petitioner, except that a further hearing before a referee will be granted only in the discretion of the referee upon a showing made by affidavit as described in code section 1180(a).

DECISION

The appeal is dismissed as not timely filed.

Sacramento, California, January 14, 1969.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

ROBERT W. SIGG, Chairman

LOWELL NELSON

CLAUDE MINARD

JOHN B. WEISS

DON BLEWETT